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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA

9 ADEL F. SAMAAAN, M.D., an individual

10 Plaintiff,

11 v.

12 UNITED HEALTHCARE SERVICES,
13 INC.; UNITED HEALTHCARE
14 INSURANCE COMPANY; and DOES
1 through 100;

15 Defendants.

Case No. 2:17-cv-01693-DSF (AGR_x)

**STIPULATED PROTECTIVE
ORDER**

Complaint Filed: March 2, 2017

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve
3 production of confidential, proprietary, or private information for which special
4 protection from public disclosure and from use for any purpose other than
5 prosecuting this litigation may be warranted. Accordingly, the parties hereby
6 stipulate to and petition the court to enter the following Stipulated Protective
7 Order. The parties acknowledge that this Order does not confer blanket protections
8 on all disclosures or responses to discovery and that the protection it affords from
9 public disclosure and use extends only to the limited information or items that are
10 entitled to confidential treatment under the applicable legal principles. The parties
11 further acknowledge, as set forth in Section 12.3, below, that this Proposed
12 Protective Order does not entitle them to file confidential information under seal;
13 Local Rule 79-5 sets forth the procedures that must be followed and the standards
14 that will be applied when a party seeks permission from the court to file material
15 under seal.

16 Based upon the Stipulation of the parties and pursuant to Rule 26(c) of the
17 Federal Rules of Civil Procedure, IT IS HEREBY ORDERED that:

18 **2. DEFINITIONS**

19 2.1 Challenging Party: a Party or Non-Party that challenges the
20 designation of information or items under this Order.

21 2.2 “CONFIDENTIAL” Information or Items: information (regardless of
22 how it is generated, stored or maintained) or tangible things that qualify for
23 protection under Federal Rule of Civil Procedure 26(c), including but not limited to
24 patient records and data, claim files, non-public financial records and data,
25 employee or personnel files, customer or client lists, confidential contracts, other
26 healthcare-related information protected by The Health Insurance Portability and
27 Accountability Act of 1996, and all other information that the party in good faith
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believes will, if disclosed, cause harm to the Producing Party's competitive position.

2.3 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items: subset of information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c) subject to limited disclosure as set forth in Paragraph 7.3, that will, if disclosed, cause substantial competitive and economic harm to the Producing Party. This includes, but is not limited to, trade secrets, United's proprietary claims-review and audit processes, and all other non-public, proprietary financial, regulatory, or strategic information and data, to the extent that any of these categories of information or tangible things will, if disclosed, cause substantial competitive and economic harm to the Producing Party.

2.4 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.5 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY."

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are provided, produced or generated in relation to the claims and disputes in this matter or in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action.

2.7 House Counsel: attorneys who are employees of a party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

1 2.8 Non-Party: any natural person, partnership, corporation, association,
2 or other legal entity not named as a Party to this action.

3 2.9 Outside Counsel of Record: attorneys who are not employees of a
4 party to this action but are retained to represent or advise a party to this action and
5 have appeared in this action on behalf of that party or are affiliated with a law firm
6 which has appeared on behalf of that party.

7 2.10 Party: any party to this action, including all of its officers, directors,
8 employees, consultants, retained experts, and Outside Counsel of Record (and their
9 support staffs).

10 2.11 Producing Party: a Party or Non-Party that produces Disclosure or
11 Discovery Material in this action.

12 2.12 Professional Vendors: persons or entities that provide litigation
13 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
14 demonstrations, and organizing, storing, or retrieving data in any form or medium)
15 and their employees and subcontractors.

16 2.13 Protected Material: any Disclosure or Discovery Material that is
17 designated as “CONFIDENTIAL” or CONFIDENTIAL – ATTORNEYS’ EYES
18 ONLY.”

19 2.14 Receiving Party: a Party that receives Disclosure or Discovery
20 Material from a Producing Party.

21 2.15 United: Collectively, United Healthcare Services, Inc. and United
22 Healthcare Insurance Company, Inc.

23 **3. SCOPE**

24 The protections conferred by this Stipulation and Order cover not only
25 Protected Material (as defined above), but also any and all copies, excerpts, or
26 compilations of Protected Material. However, the protections conferred by this
27 Stipulation and Order do not cover the following information: (a) any information
28 that is in the public domain at the time of disclosure to a Receiving Party or

1 becomes part of the public domain after its disclosure to a Receiving Party as a
2 result of publication not involving a violation of this Order, including becoming
3 part of the public record through trial or otherwise; and (b) any information known
4 to the Receiving Party prior to the disclosure or obtained by the Receiving Party
5 after the disclosure from a source who obtained the information lawfully and under
6 no obligation of confidentiality to the Designating Party. Any use of Protected
7 Material at trial shall be governed by a separate agreement or order.

8 **4. DURATION**

9 Even after final disposition of this litigation, the confidentiality obligations
10 imposed by this Order shall remain in effect until a Designating Party agrees
11 otherwise in writing or a court order otherwise directs. Final disposition shall be
12 deemed to be the later of (1) dismissal of all claims and defenses in this action,
13 with or without prejudice; and (2) final judgment herein after the completion and
14 exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
15 including the time limits for filing any motions or applications for extension of
16 time pursuant to applicable law.

17 **5. DESIGNATING PROTECTED MATERIAL**

18 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

19 Each Party or Non-Party that designates information or items for protection
20 under this Order must take care to limit any such designation to specific material
21 that qualifies under the appropriate standards.

22 If it comes to a Designating Party's attention that information or items that it
23 designated for protection do not qualify for protection, that Designating Party must
24 promptly notify all other Parties that it is withdrawing the mistaken designation.

25 **5.2 Manner and Timing of Designations.**

26 Except as otherwise provided in this Order (see, e.g., second paragraph of
27 Section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or
28 Discovery Material that qualifies for protection under this Order must be clearly so

1 designated before the material is disclosed or produced. Designation in conformity
2 with this Order requires:

3 (a) for information in documentary form (e.g., paper or electronic
4 documents, but excluding transcripts of depositions or other pretrial or trial
5 proceedings), that the Producing Party affix the legend “CONFIDENTIAL” or
6 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains
7 protected material. If only a portion or portions of the material on a page qualifies
8 for protection, the Producing Party also must clearly identify the protected
9 portion(s) (e.g., by making appropriate markings in the margins).

10 (b) for testimony given in a deposition, confidentiality designations
11 shall be made either on the record or by written notice to the other party within 14
12 days of receipt of the transcript. Unless otherwise agreed, depositions shall be
13 treated as “Confidential” during the 14-day period following receipt of the
14 transcript. The deposition of any witness (or any portion of such deposition) that
15 encompasses Confidential information shall be taken only in the presence of
16 persons who are qualified to have access to such information.

17 (c) for information produced in some form other than documentary
18 and for any other tangible items, that the Producing Party affix in a prominent
19 place on the exterior of the container or containers in which the information or
20 item is stored the legend “CONFIDENTIAL” or CONFIDENTIAL –
21 ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information or
22 item warrant protection, the Producing Party, to the extent practicable, shall
23 identify the protected portion(s).

24 5.3 Inadvertent Failures to Designate.

25 If timely corrected, an inadvertent failure to designate qualified information
26 or items does not, standing alone, waive the Designating Party’s right to secure
27 protection under this Order for such material. Upon timely correction of a
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1 designation, the Receiving Party must make reasonable efforts to assure that the
2 material is treated in accordance with the provisions of this Order.

3 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

4 All challenges to confidentiality designations shall proceed under Local Rule
5 37-1 through Local Rule 37-4.

6 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7 **7.1 Basic Principles.**

8 A Receiving Party may use Protected Material that is disclosed or produced
9 by another Party or by a Non-Party in connection with this case only for
10 prosecuting, defending, or attempting to settle this litigation or related litigation
11 involving some or all of the parties hereto. Such Protected Material may be
12 disclosed only to the categories of persons and under the conditions described in
13 this Order. When the litigation has been terminated, a Receiving Party must
14 comply with the provisions of Section 13 below.

15 Protected Material must be stored and maintained by a Receiving Party at a
16 location and in a secure manner that ensures that access is limited to the persons
17 authorized under this Order.

18 **7.2 Disclosure of “CONFIDENTIAL” Information or Items.**

19 Unless otherwise ordered by the court or permitted in writing by the
20 Designating Party, a Receiving Party may disclose any information or item
21 designated “CONFIDENTIAL” only to:

22 (a) the Receiving Party’s Outside Counsel of Record in this action, as well
23 as employees of said Outside Counsel of Record to whom it is reasonably
24 necessary to disclose the information for this litigation;

25 (b) the officers, directors, and employees (including House Counsel) of the
26 Receiving Party to whom disclosure is reasonably necessary for this litigation;

1 (c) Experts (as defined in this Order) of the Receiving Party to whom
2 disclosure is reasonably necessary for this litigation and who have signed the
3 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

4 (d) the court and its personnel;

5 (e) court reporters and their staff, professional jury or trial consultants, mock
6 jurors, licensed private investigators retained by Counsel, and Professional
7 Vendors to whom disclosure is reasonably necessary for this litigation and who
8 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

9 (f) during their depositions, witnesses in the action to whom disclosure is
10 reasonably necessary and who have signed the “Acknowledgment and Agreement
11 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
12 ordered by the court. Pages of transcribed deposition testimony or exhibits to
13 depositions that reveal Protected Material must be separately bound by the court
14 reporter and may not be disclosed to anyone except as permitted under this
15 Stipulated Protective Order.

16 (g) the author or recipient of a document containing the information or a
17 custodian or other person who otherwise possessed or knew the information.

18 7.3 Disclosure of “CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
19 Information or Items.

20 Unless otherwise ordered by the court or permitted in writing by the
21 Designating Party, a Receiving Party may disclose any information or item
22 designated “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

23 (a) the Receiving Party’s Outside Counsel of Record in this action;

24 (b) United’s House Counsel in this action;

25 (c) Experts (as defined in this Order) of the Receiving Party to whom
26 disclosure is reasonably necessary for this litigation and who have signed the
27 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

28 (d) the court and its personnel;

1 (e) court reporters and their staff, professional jury or trial consultants, mock
2 jurors, licensed private investigators retained by Counsel, and Professional
3 Vendors to whom disclosure is reasonably necessary for this litigation and who
4 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

5 (f) during their depositions, witnesses in the action to whom disclosure is
6 reasonably necessary and who have signed the “Acknowledgment and Agreement
7 to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or
8 ordered by the court. Pages of transcribed deposition testimony or exhibits to
9 depositions that reveal Protected Material must be separately bound by the court
10 reporter and may not be disclosed to anyone except as permitted under this
11 Stipulated Protective Order.

12 (g) the author or recipient of a document containing the information or a
13 custodian or other person who otherwise possessed or knew the information.

14 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
15 **PRODUCED**

16 If a Party is served with a subpoena or a court order issued in other litigation
17 that compels disclosure of any information designated by an opposing or third
18 party in this Action as “CONFIDENTIAL” or “CONFIDENTIAL –
19 ATTORNEYS’ EYES ONLY,” that Party must:

20 (a) unless prohibited by a Court Order, or specifically prohibited by a statute
21 or regulation cited to the producing party by the requesting party, promptly notify
22 in writing the Designating Party. Such notification shall include a copy of the
23 subpoena or court order, unless prohibited by law;

24 (b) promptly notify in writing the party who caused the request, or subpoena,
25 or order to issue in the other litigation that some or all of the material covered by
26 the subpoena or order is subject to this Protective Order. Such notification shall
27 include a copy of this Stipulated Protective Order; and
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1 (c) when applicable, as set forth in ¶ (a), cooperate with respect to all
2 reasonable procedures sought to be pursued by the Designating Party whose
3 Protected Material may be affected. However, the parties must follow the
4 procedures set forth in Federal Rule of Civil Procedure 45(d)(2) when asserting
5 that subpoenaed or requested information is subject to a privilege. The filing of a
6 motion for a protective order does not, by itself, stay compliance with a subpoena.

7 If the Designating Party timely seeks a protective order from a court of
8 competent jurisdiction, the Party served with the subpoena or court order shall not
9 produce any information designated in this action as “CONFIDENTIAL” before a
10 determination by the court from which the subpoena or order issued, unless the
11 Party has obtained the Designating Party's permission or as otherwise required by
12 law or court order. The Designating Party shall bear the burden and expense of
13 seeking protection in that court of its confidential material and nothing in these
14 provisions should be construed as authorizing or encouraging a Receiving Party in
15 this Action to disobey a lawful directive from another court.

16 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE**
17 **PRODUCED**

18 9.1 The terms of this Order are applicable to information, documents
19 and/or tangible things produced by a Non-Party in this action, and designated as
20 “CONFIDENTIAL” or “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”
21 Such information produced by Non-Parties, when so designated by the Non-Party
22 upon production or by any other Party pursuant to Section 9.2 below, is protected
23 by the remedies and relief provided by this Order. Nothing in these provisions
24 should be construed as prohibiting a Non-Party from seeking additional
25 protections.

26 9.2 In the event that a Party is required, by a valid discovery request, to
27 produce a Non-Party’s confidential information in its possession, and the Party is
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1 subject to an agreement with the Non-Party not to produce the Non-Party's
2 confidential information, then the Party shall:

3 (a) promptly notify in writing the Requesting Party and the Non-Party
4 that some or all of the information requested is subject to a confidentiality
5 agreement with a Non-Party;

6 (b) promptly provide the Non-Party with a copy of the Stipulated
7 Protective Order in this litigation, the relevant discovery request(s), and a
8 reasonably specific description of the information requested; and

9 (c) make the information requested available for inspection by the
10 Non-Party.

11 If the Non-Party fails to object or seek a protective order from this Court
12 within fourteen (14) days of receiving the notice and accompanying information,
13 the Receiving Party may produce the Non-Party's confidential information
14 responsive to the discovery request. If the Non-Party timely seeks a protective
15 order, the Receiving Party shall not produce any information in its possession or
16 control that is subject to the confidentiality agreement with the Non-Party before a
17 determination by the court. Absent a court order to the contrary, the Non-Party
18 shall bear the burden and expense of seeking protection in this court of its
19 Protected Material.

20 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED**
21 **MATERIAL**

22 If a Receiving Party learns that, by inadvertence or otherwise, it has
23 disclosed Protected Material to any person or in any circumstance not authorized
24 under this Stipulated Protective Order, the Receiving Party must immediately (a)
25 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
26 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
27 the person or persons to whom unauthorized disclosures were made of all the terms
28 of this Order, and (d) request such person or persons to execute the

1 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
2 A.

3 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
4 **OTHERWISE PROTECTED MATERIAL**

5 In accordance with Federal Rule of Civil Procedure 26(b)(5)(B) and Federal
6 Rule of Evidence 502, any Party who inadvertently produces Discovery Material
7 that is privileged or otherwise immune from discovery shall, promptly upon
8 discovery of such inadvertent production, so advise the Producing Party and
9 request that the Discovery Materials be returned. The Receiving Party shall return,
10 sequester, or destroy such inadvertently produced Discovery Materials, including
11 all copies, within five (5) business days of receiving such a written request. The
12 Party returning such inadvertently produced Discovery Materials may thereafter
13 seek re-production of any such Discovery Materials pursuant to applicable law.

14 **12. MISCELLANEOUS**

15 **12.1 Right to Further Relief.**

16 Nothing in this Order abridges the right of any person to seek its
17 modification by the court in the future.

18 **12.2 Right to Assert Other Objections.**

19 By stipulating to the entry of this Protective Order no Party waives any right
20 it otherwise would have to object to disclosing or producing any information or
21 item on any ground not addressed in this Stipulated Protective Order. Similarly, no
22 Party waives any right to object on any ground to use in evidence of any of the
23 material covered by this Protective Order.

24 **12.3 Filing Protected Material.**

25 Without written permission from the Designating Party or a court order
26 secured after appropriate notice to all interested persons, a Party may not file in the
27 public record in this action any Protected Material. A Party that seeks to file under
28 seal any Protected Material must comply with Local Rule 79-5. Protected Material

1 may only be filed under seal pursuant to a court order authorizing the sealing of the
2 specific Protected Material at issue. Pursuant to Local Rule 79-5, a sealing order
3 will issue only upon a request establishing that the Protected Material at issue is
4 privileged, protectable as a trade secret, or otherwise entitled to protection under
5 the law. If a Receiving Party's request to file Protected Material under seal
6 pursuant to Local Rule 79-5 is denied by the court, then the Receiving Party may
7 file the information in the public record unless otherwise instructed by the court.

8 **13. FINAL DISPOSITION**

9 Within 60 days after the final disposition of this action, as defined in
10 paragraph 4, each Receiving Party must return all Protected Material to the
11 Producing Party or destroy such material. As used in this subdivision, "all
12 Protected Material" includes all copies, abstracts, compilations, summaries, and
13 any other format reproducing or capturing any of the Protected Material. Whether
14 the Protected Material is returned or destroyed, the Receiving Party must submit a
15 written certification to the Producing Party (and, if not the same person or entity, to
16 the Designating Party) by the 60 day deadline that (1) identifies (by category,
17 where appropriate) all the Protected Material that was returned or destroyed and
18 (2) affirms that the Receiving Party has not retained any copies, abstracts,
19 compilations, summaries or any other format reproducing or capturing any of the
20 Protected Material. Notwithstanding this provision, Counsel are entitled to retain
21 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
22 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
23 reports, attorney work product, and consultant and expert work product, even if
24 such materials contain Protected Material. Any such archival copies that contain
25 or constitute Protected Material remain subject to this Protective Order as set forth
26 in Section 4 (DURATION).

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1 IT IS SO ORDERED.
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Alicia G. Rosenberg

5 Dated: July 12, 2017
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Hon. Alicia G. Rosenberg
United States Magistrate Judge

EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [_____] in the case of *Adel F. Samaan, M.D. v. United Healthcare Services, Inc., et al.* Case No. 2:17-CV-01693-DSF (AGRx).

I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

[printed name]

Signature: _____

[signature]